

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1600 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PREMJIBHAI KANJIBHAI BHAGAT

Versus

STATE OF GUJARAT

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Appearance:

MR YV BRAHMBHATT for Petitioners

Mr. Y.F.Mehta, PUBLIC PROSECUTOR for Respondent No. 1

SERVED for Respondent No. 2

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 05/11/96

ORAL JUDGEMENT

Rule. Premjibhai Kanjibhai Bhagat and Bharatbhai Premjibhai Bhagat have filed the present petition for quashing the criminal case bearing M case no. 10 of 1996 on the file of the Judicial Magistrate, First Class, Kalol.

2. The respondent no. 2 has filed criminal case no. 10 of 1996 in the Court of the Judicial Magistrate First Class, Kalol and the petitioners want me to quash the said proceeding. I am aware that this is a petition for quashing the proceedings under section 482 of the Code of Criminal Procedure. Consequently, I cannot have the appreciation of evidence and I have to consider the averments made by the complainant in his complaint by giving the face value to those averments made in the complaint. Under section 482 of the Criminal Procedure, I can quash the said proceedings only in case if I find the case of abuse of process of law.

3. If the averments made by the complainant in the complaint are seen, it would be quite clear that as per the complaint made by the complainant, the complainant is having a partnership firms by names Ankita Enterprises, Guru Aum Trading Company, Vimal Trading Company, Satnam Trading Company and S.K.Prajapati and company. It is the case of the complainant that the present petitioner no. 1 is having transactions with the said company since 1985. It is his further allegation that from these various companies, he was taking goods on credit and was paying regularly, but in the year 1995-96, he was not regular in paying his dues and according to the complainant, he was owing Rs. 25,945/- to Ankit Enterprises, Rs. 15,875/- to Guru Aum Trading Co., Rs. 70,330/- to Vimal Trading and Rs. 8025/- to S.K.Prajapati and company. The complainant has further stated in the complaint itself that the notice was issued by registered post to the present petitioner no. 1 calling upon him to pay his arrears. Thereafter, the petitioner no. 1 had come to those firms and there was a settlement of account and verification of accounts between the parties and at that time, the petitioner no.1 had promised to pay the same, but he did not pay the same. It is his further case in his complaint that on one day, when the complainant was sitting in the firm Vimal Trading Company, the petitioner no. 1 happened to come there and he asked him to pay his dues of his various firms. At that time, the petitioner gave filthy abuses saying that he would not pay anything. On hearing, people gathered there and they turned away the petitioner and while going away, he had threatened not to make the payment of his dues.

4. If the above averments made in the complaint are carefully read, then it would be quite clear that it is a case of the complainant himself that there were mercantile transactions between the [ complainant and the present petitioner no.1 and the said

[transactions were for a number of years and as per the claim of the petitioner in the year 1995, certain amounts were due from the present petitioner. Now, as regards those dues it could not be said that the petitioner no. 1 has committed any criminal offence. It will be only a civil liability of the petitioner no.1, in case, if the claim made by the complainant-respondent no. 2 is correct and true. But in no case, it could be said that even accepting that the petitioner no. 1 had promised to pay those dues and he did not fulfil his promise, he had committed any criminal offence.

5. No doubt, the complainant has averred that the petitioners have given him filthy abuses but it is very pertinent to note that he does not give on what date the said incident took place. It is a clear vague allegation and the said vague allegation of the commission of the alleged offence under section 504 is made in order to give a colour of the commission of the criminal offence by the petitioners. It seems that the learned Magistrate has not properly read the provisions of section 156 as well as sections 200 and 204 of the Code of Criminal Procedure. The learned Magistrate has forgotten the basic principle that before passing any order, it is necessary for him to read the document on which he has to pass the order. Now, in the instant case, he has ordered that the complaint should be sent to the police for holding an investigation under section 156(3) of the Code of Criminal Procedure. If the provisions of section 156(3) of the Code of Criminal Procedure are seen, then it would be quite clear that under that provision, a Magistrate can direct the police officer to hold an investigation in case of cognizable offence. Therefore, it is necessary for him to first see as to whether the complaint was disclosing any cognizable offence and for that purpose, he ought to have read the complaint. But it seems that he has not at all read the complaint and he has mechanically passed the order of ordering the police to hold an investigation under section 156(3) of the Code of Criminal Procedure. This conduct on the part of the learned Magistrate reflects against his judicial conduct. He is holding a responsible office and therefore, he must behave responsibly and he cannot blindly pass such orders.

6. Thus, from the material on record, it would be quite clear that a complaint which was lodged by the respondent no. 2 does not disclose the commission of any offences and in spite of this, the learned Magistrate has passed the order to investigate the said complaint.

Obviously, the said order is illegal and improper. I therefore, hold that the present petition will have to be allowed. I therefore, allow the same and I hereby quash and set aside the criminal proceedings of case no. 10 of 1996 on the file of the learned Judicial Magistrate, First Class, Kalol. Rule is accordingly made absolute.

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